

11-26-01

DAC, inc.
B2R

KIT 257 JEL/JRC

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE



Application of : T. Yashima, et al
Serial No. : 08/787,850
Filed : January 23, 1997
For : FLOOR WORKING MACHINE WITH A WORKING
IMPLEMENT MOUNTED ON A SELF-PROPELLED
VEHICLE FOR ACTION ON FLOOR
Group Art Unit : 1744
Examiner : R. Chin

November 14, 2001

BOX DAC

Assistant Commissioner for Patents
Washington, D.C. 20231

Express Mail" mailing label Number EL829643357US, Date of Deposit November 14, 2001, I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under CFR 1.10 on the date indicated above, and is addressed to the Assistant Commissioner for Patents, Box DAC, Washington, D.C. 20231

FULBRIGHT & JAWORSKI L.L.P.

Eileen Sheffield
Eileen Sheffield

SUBMISSION OF PETITION TO REVIVE FOR UNINTENTIONAL ABANDONMENT

SIR:

Submitted herewith is a petition to revive this application for unintentional abandonment.

A brief explanation of the events leading to this petition is in order.

The present application was allowed and set to issue when it was discovered that there was a translational error. A rule 312 amendment was filed to correct this error, but was denied entry.

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KIT 257 JEL/JRC

A decision was granted on a subsequent petition under 1.183 to withdraw the application from issue in favor of a continuation application which was filed on April 19, 1999 (initially accorded serial number 09/295,013 and a filing date of April 20, 1999).

Eventually, Applicants were notified that the USPTO did not believe that the '013 application was complete and Applicants' petition of March 30, 2000 to accord the application a filing date as of the date of filing by Express mail was dismissed. It took over one year to obtain this decision (copy enclosed), so Applicants were unable to respond in a timely fashion while the instant application was still pending. The sole reason the instant application was withdrawn from issue was to file a continuation application to address the translational error.

A CPA application was not filed in the instant application since it was unclear whether the Rule 312 amendment would be entered which would have obviated a need for a continuation application, and, in the meantime, the continuation was filed as a precaution since the results with respect to the Rule 312 amendment were not known.

Since it was not clear whether the '013 application was granted a filing date and a decision to enter the Rule 312 amendment was not received, yet another precautionary continuation application was filed on July 1, 1999, while the instant application was still pending. Unfortunately, this second continuation application was apparently lost at the USPTO because although a return postcard was received, no further correspondence has been received. A petition to accord that application a serial number and filing date was mailed on October 23, 2001.

A response to the dismissal of the petition to accord a filing date in the '013 application is also being filed today, and either today or the April 1999 date will be the filing date of that

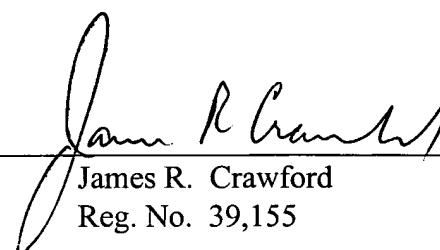
application. That response includes a request for reconsideration of the dismissal and further requests that the April 1999 filing date be accorded to the '013 continuation application, or, alternatively, that a filing date be accorded to that application as of receipt of the necessary filing requirements. Since the results are uncertain, Applicants file this petition as a precautionary measure so that co-pendency is established until the '013 application has been accorded pending status and filing requirements are completed. In view of the foregoing, it is respectfully submitted that this application was abandoned unintentionally before co-pendency of the continuation application was established.

It is respectfully requested that this petition, the request for reconsideration in the '013 application and the petition to accord a filing date and serial number to the application filed July 1, 1999 be considered and decided together.

If any fees are due to enter this communication, the Examiner is authorized to charge Deposit Account No. 50-0624.

Respectfully submitted,

FULBRIGHT & JAWORSKI L.L.P.



James R. Crawford
Reg. No. 39,155

666 Fifth Avenue
New York, New York 10103
(212) 318-3148

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O I P E J C 132
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P A T E N T & T R A D E M A R K O F F I C E

FEE TRANSMITTAL for FY 2002

Patent fees are subject to annual revision.

TOTAL AMOUNT OF PAYMENT (\$ 1,280.00)

Complete if Known

| | |
|----------------------|------------------|
| Application Number | 08/787,850 |
| Filing Date | January 23, 1997 |
| First Named Inventor | Iwao Nozaki |
| Examiner Name | R. Chin |
| Group Art Unit | 1744 |
| Attorney Docket No. | NY-KIT 257-US |

METHOD OF PAYMENT1. The Commissioner is hereby authorized to charge indicated fees and credit any overpayments to:

Deposit Account Number 50-0624

Deposit Account Name

 Charge Any Additional Fee Required Under 37 CFR 1.16 and 1.17 Applicant claims small entity status. See 37 CFR 1.27
2. Payment Enclosed
 Check Credit Card Money Order Other
FEE CALCULATION (continued)**3. ADDITIONAL FEES**

| Large Entity Fee Code | Fee (\$) | Small Entity Fee Code | Fee (\$) | Fee Description | Fee Paid |
|-----------------------------|-------------|-----------------------------|-------------|--|-------------|
| 105 | 130 | 205 | 65 | Surcharge - late filing fee or oath | |
| 127 | 50 | 227 | 25 | Surcharge - late provisional filing fee or cover sheet | |
| 139 | 130 | 139 | 130 | Non-English specification | |
| 147 | 2,520 | 147 | 2,520 | For filing a request for ex parte reexamination | |
| 112 | 920* | 112 | 920* | Requesting publication of SIR prior to Examiner action | |
| 113 | 1,840* | 113 | 1,840* | Requesting publication of SIR after Examiner action | |
| 115 | 110 | 215 | 55 | Extension for reply within first month | |
| 116 | 400 | 216 | 200 | Extension for reply within second month | |
| 117 | 920 | 217 | 460 | Extension for reply within third month | |
| 118 | 1,440 | 218 | 720 | Extension for reply within fourth month | |
| 128 | 1,960 | 228 | 980 | Extension for reply within fifth month | |
| 119 | 320 | 219 | 160 | Notice of Appeal | |
| 120 | 320 | 220 | 160 | Filing a brief in support of an appeal | |
| 121 | 280 | 221 | 140 | Request for oral hearing | |
| 138 | 1,510 | 138 | 1,510 | Petition to institute a public use proceeding | |
| 140 | 110 | 240 | 55 | Petition to revive - unavoidable | |
| 141 | 1,280 | 241 | 640 | Petition to revive - unintentional | 1,280.00 |
| 142 | 1,280 | 242 | 640 | Utility issue fee (or reissue) | |
| 143 | 460 | 243 | 230 | Design issue fee | |
| 144 | 620 | 244 | 310 | Plant issue fee | |
| 122 | 130 | 122 | 130 | Petitions to the Commissioner | |
| 123 | 50 | 123 | 50 | Processing fee under 37 CFR 1.17(q) | |
| 126 | 180 | 126 | 180 | Submission of Information Disclosure Stmt | |
| 581 | 40 | 581 | 40 | Recording each patent assignment per property (times number of properties) | |
| 146 | 740 | 246 | 370 | Filing a submission after final rejection (37 CFR 1.129(a)) | |
| 149 | 740 | 249 | 370 | For each additional invention to be examined (37 CFR 1.129(b)) | |
| 179 | 740 | 279 | 370 | Request for Continued Examination (RCE) | |
| 169 | 900 | 169 | 900 | Request for expedited examination of a design application | |
| Other fee (specify) _____ | | | | | |

*Reduced by Basic Filing Fee Paid SUBTOTAL (3) (\$ 1,280.00)

**or number previously paid, if greater; For Reissues, see above

SUBMITTED BY**Complete (if applicable)**

| | | | | | |
|-------------------|--------------------------|--------------------------------------|--------|-----------|-------------------|
| Name (print/type) | James R. Crawford | Registration No. (Attorney/Agent) | 39,155 | Telephone | (212) 318-3148 |
| Signature | <i>James R. Crawford</i> | | | Date | November 14, 2001 |

Fee Transmittal

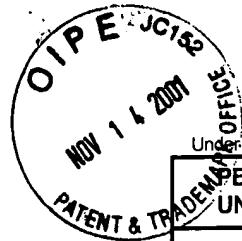
I hereby certify that this correspondence is being deposited with the U.S. Postal Service as Express Mail, Airbill No. EL 829643357 US in an envelope addressed to: Box DAC, Commissioner for Patents, Washington, DC 20231, on the date shown below.

Dated: November 14, 2001

Signature: *Eileen Sheffield* (Eileen Sheffield)

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| | | |
|--|---|--|
| PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b) | | Docket Number (Optional) KIT-257 |
| First named inventor: Yashima Takashi, et al. | | |
| Application Number: | 08/787,850 | Group Art Unit: 1744 |
| Filed: | 1/23/97 | |
| Title: | FLOOR WORKING MACHINE WITH A WORKING IMPLEMENT MOUNTED ON A SELF-POROPELLED VEHICLE FOR ACTON ON FLOOR | |
| Attention: Office of Petitions | | |
| <p>NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (703) 305-9282.</p> <p>The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the Office notice or action plus any extensions of time actually obtained.</p> <p style="text-align: center;">APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION</p> <p>NOTE: A grantable petition requires the following items:</p> <ul style="list-style-type: none">(1) Petition fee;(2) Reply and/or issue fee;(3) Terminal disclaimer with disclaimer fee – required for all utility and plant applications filed before June 8, 1995, and for all design applications; and(4) Statement that the entire delay was unintentional. <p>1. Petition fee</p> <p><input type="checkbox"/> Small entity – fee \$ _____ (37 CFR 1.17(m)). Applicant claims small entity status. See 37 CFR 1.27.</p> <p><input checked="" type="checkbox"/> Other than small entity – fee <u>1280</u> (37 CFR 1.17(m))</p> <p>2. Reply and/or fee</p> <p>A. The reply and/or fee to the above-noted Office action in the form of _____ (identify the type of reply):</p> <p><input type="checkbox"/> has been filed previously on _____.</p> <p><input type="checkbox"/> is enclosed herewith.</p> <p>B. The issue fee of \$ _____ <input type="checkbox"/> has been paid previously on _____. is enclosed herewith.</p> <p style="text-align: right;">RECEIVED NOV 27 2001 OFFICE OF PETITIONS</p> | | |

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3. Terminal disclaimer with disclaimer fee

Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.

A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ _____ for a small entity or \$ _____ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE: The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c)(III)(C) and (D)).]

November 14, 2001

Date



Signature

Telephone
Number: (212) 318-3148

James R. Crawford

Typed or printed name

FULBRIGHT & JAWORSKI L.L.P.
666 Fifth Avenue
New York, New York 10103

Address

Enclosures:

Fee Payment

Reply

Terminal Disclaimer Form

Additional sheets containing statements establishing unintentional delay

Other: _____

25092108.1

Petition to Revive Application

I hereby certify that this correspondence is being deposited with the U.S. Postal Service as Express Mail, Airbill No. EL 8296433574, in an envelope addressed to: Box DAC, Commissioner for Patents, Washington, DC 20231, on the date shown below.

Dated: November 14, 2001

Signature: Eileen Shoffred



Please type a plus sign inside this box → +

PTO/SB/21 (08-00)
Approved for use through 10/31/2002. OMB 0651-0031
U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

TRANSMITTAL FORM

(to be used for all correspondence after initial filing)

| | | | |
|--|--|------------------------|------------------|
| | | Application Number | 08/787,850 |
| | | Filing Date | January 23, 1997 |
| | | First Named Inventor | Iwao Nozaki |
| | | Group Art Unit | 1744 |
| | | Examiner Name | R. Chin |
| Total Number of Pages in This Submission | | Attorney Docket Number | NY-KIT 257-US |

ENCLOSURES (check all that apply)

| | | |
|---|--|---|
| <input checked="" type="checkbox"/> Fee Transmittal Form | <input type="checkbox"/> Assignment Papers (for an Application) | <input type="checkbox"/> After Allowance Communication to Group |
| <input checked="" type="checkbox"/> Fee Attached | <input type="checkbox"/> Drawing(s) | <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences |
| <input type="checkbox"/> Amendment/Reply | <input type="checkbox"/> Licensing-related Papers | <input type="checkbox"/> Appeal Communication to Group (Appeal Notice, Brief, Reply Brief) |
| <input type="checkbox"/> After Final | <input checked="" type="checkbox"/> Petition | <input type="checkbox"/> Proprietary Information |
| <input type="checkbox"/> Affidavits/declaration(s) | <input type="checkbox"/> Petition to Convert to a Provisional Application | <input type="checkbox"/> Status Letter |
| <input type="checkbox"/> Extension of Time Request | <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address | <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below) |
| <input type="checkbox"/> Express Abandonment Request | <input type="checkbox"/> Terminal Disclaimer | <i>Submission of Petition to Revive</i> |
| <input type="checkbox"/> Information Disclosure Statement | <input type="checkbox"/> Request for Refund | |
| <input type="checkbox"/> Certified Copy of Priority Document(s) | <input type="checkbox"/> CD, Number of CD(s) _____ | |
| <input type="checkbox"/> Response to Missing Parts/ Incomplete Application | Remarks | |
| <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53 | | |

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

| | | |
|-------------------------------|--|--|
| Firm or Individual Name | FULBRIGHT & JAWORSKI L.L.P. James R. Crawford | |
| Signature | <i>James R. Crawford</i> | |
| Date | November 14, 2001 | |

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an envelope addressed to: Box DAC, Commissioner for Patents, Washington, DC 20231, on the date shown below.

Dated: November 14, 2001

Signature: *Eileen Sheffield* (Eileen Sheffield)



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
www.uspto.gov



FULBRIGHT & JAWORSKI, LLP

NEW YORK DOCKETING

Docketed Not Required Previously Updated Docket No: KIT 257.1CONT/5RC

Paper No. 7

Action: Resp to Decision, Drawings, Spec. PagesReminder: 11/05/2001 + suppl. Oath/declDate: Due/Done 12/03/2001Initials: RK

COPY MAILED

OCT 05 2001

OFFICE OF PETITIONS

In re Application of

Yashima et al.

Application No. 09/295,013

DECISION DISMISSING PETITION

Deposited: April 20, 1999

Attorney Docket No. KIT/257.1

This is a decision on the petition filed by facsimile on March 30, 2000, requesting that the above-identified application be accorded a filing date of April 19, 1999, with 39 pages of specification and 20 sheets of drawings as part of the original disclosure. The Office sincerely apologizes for the delay in responding to the instant petition.

On April 20, 1999, the application was deposited. On May 10, 1999, Initial Patent Examination Division mailed a Notice of Omitted Items which indicated that drawings were omitted. The box on the Notice of Omitted Items for pages of specification was also checked but no specific page numbers were identified as being omitted. A Notice To File Missing Parts of Application was also mailed on May 10, 1999, stating that the oath or declaration was missing and requiring an oath or declaration and the \$130.00 surcharge. Both Notices indicated that the application had been accorded a filing date.

On July 9, 1999, a "Response to Notice to File Missing Parts of Application" was filed. The response included an executed declaration, the \$130.00 surcharge, and a copy of the Notice to File Missing Parts.

The present petition was filed on March 30, 2000. The petition is purportedly a copy of a petition deposited in first class mail on July 7, 1999. The petition was accompanied by a postcard receipt listing a "Petition Establishing Deposit of Application Papers And Fee Under 37 CFR Section 1.17(i)", "Copy of Notice of Omitted Item(s)", "Copy of Utility Patent Application Transmittal", "Copy of Return Postcard", "Copy of Express Mail Label EJ474429773US", and "Check in the Amount of \$130.00." However, the postcard does not include a stamp by the USPTO to acknowledge receipt of the items listed thereon. Office finance records do show that a \$130.00 petition fee was received on July 15, 1999.

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Petitioners argue that 39 pages of specification and 20 sheets of drawings were filed on April 19, 1999. Petitioners refer to the utility application transmittal sheet, the accompanying postcard, and the express mail filing receipt.

The evidence has been considered, but is not persuasive that drawings were filed on April 19, 1999 or April 20, 1999. The USPTO file is the official record of the papers originally filed in this application. A review of the official file reveals that no drawings are present in the file. An applicant alleging that a paper was filed in the USPTO and later misplaced has the burden of proving the allegation by a preponderance of the evidence. It is noted that a transmittal letter is only evidence of what was intended to be filed and not evidence of what was actually filed. The best evidence of what was filed with the application is a postcard receipt. In this case, the postcard receipt lists a "Supplemental Amendment", "Affidavit (5 revised pages)", "Transmittal Letter", and "Utility Patent Application Transmittal." This postcard, however, does not include a stamp by the USPTO to acknowledge receipt of the listed items. Even if the postcard did contain a USPTO stamp, it is noted that the postcard does not itemize sheets of drawings or pages of specification and thus could not serve as evidence that either drawings or a certain number of pages of specification were filed. See MPEP 503.

A review of the application file reveals that a Supplemental Amendment, an Affidavit (2 pages), a Transmittal Letter (2 pages), a Utility Patent Application Transmittal (1 page), and 5 pages of specification (including claims) were deposited on April 20, 1999. The 5 pages of specification are **not** numbered. The 5 pages of specification do not refer to drawings. The claims include claims 1 and 2, an incomplete claim 3, another incomplete claim which is unnumbered, and claims 12-14. As noted above, no drawings are present in the application. It is noted that the "Transmittal Letter" indicates that the letter is accompanied by "an application for a continuing application along with four (sic) (5) revised pages of the previously filed specification." It appears that the 5 revised pages of specification may be the only pages of specification which are present.

The question of whether drawings are necessary under the first sentence of 35 USC 113 has been presented to the primary examiner responsible for examining the subject matter claimed in the application. The examiner has stated that drawings are necessary for an understanding of the claimed subject matter. A copy of the examiner's opinion is attached. No error is found in the examiner's opinion. Since drawings have been determined to be necessary for an understanding of at least some of the claimed subject matter, the application as filed was incomplete.

It is noted that Initial Patent Examination Division should have mailed a Notice of Incomplete Application, as per MPEP 601.01(g), rather than a Notice of Omitted Items, since the application was filed without drawings and did not contain at least one claim directed to subject matter for which a drawing is usually not considered essential for a filing date. The Notice of Omitted Items and the Notice to File Missing Parts of Application mailed on May 10, 1999, were in error to the

extent that they indicated that the application was entitled to a filing date.

While the petition also argues that the 39 pages of specification and 20 sheets of drawings were filed on April 19, 1999 as opposed to April 20, 1999, the copy of the Express Mail submitted with the petition does not show a "date-in" which is legible. Since the application is incomplete, however, this issue is no longer relevant.

The petition is dismissed.

The application still lacks a drawing of applicants' invention and pages (unknown page numbers) of the specification are omitted. Thus, the application remains incomplete. The filing date will be the date of receipt of the required drawings. The drawing and any specification pages submitted must be accompanied by a supplemental oath or declaration referring to the omitted drawings and omitted pages.

Applicant is given **TWO MONTHS** from the date of this decision to file the drawings, specification pages, and the supplemental oath or declaration required above. Failure to complete the application within this time period will result in the return of the application to Initial Patent Examination Division for processing as an incomplete application (no filing date granted). The response should be directed as follows:

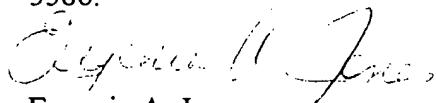
By mail: Assistant Commissioner for Patents
 Box DAC
 Washington, D.C. 20231

By hand: Crystal Plaza Four, Suite 3C23
 2201 South Clark Place
 Arlington, VA

If applicant desires to claim the benefit of prior application No. 08/787,850, appropriate steps must be taken to revive the prior application to establish copendency between the prior application and the present application (once it is completed).

The application is being retained in this office to await receipt of any reply.

Telephone inquiries specific to this matter should be directed to the undersigned at (703) 306-5586.



Eugenia A. Jones
Senior Legal Advisor
Office of Patent Legal Administration
Office of the Deputy Commissioner
for Patent Examination Policy

Enclosure: Copy of memo from Randall Chin

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OFFICE OF PETITIONS

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FULBRIGHT & JAWORSKI, LLP
NEW YORK OFFICE

U.S. PATENT & TRADEMARK OFFICE
NOV 14 2000
JC183

DATE: November 28, 2000

TO: Office of Petitions

FROM: Randall Chin, Primary Examiner- AU 1744

SUBJECT: Application no. 09/295,013

It has been noticed that there are missing pages for the claims and that the opinion below is based only on claims that are present in this application.

It is the opinion of the Primary Examiner that all claims would require drawings for an understanding of the claimed subject matter sought to be patented. Specifically, drawings are necessary for understanding function and structural arrangement of the floor working machine which comprises a self-propelled vehicle body including a working implement for treating the floor, a U-turn control means, a spin turn control means, and a running control means (claim 1), a semi-automatic control unit that is operable in response to a U-turn command (claim 2), the running control means including a full automatic control unit that is operable to control the U-turn control means and the spin turn control means automatically based on a set running program (claim 3), running wheels including a dirigible drive wheels and a pair of right and left driven wheels (claims 12 and 13), and wherein the right and left wheels are non-dirigible wheels (claim 14).


RANDALL E. CHIN
PRIMARY EXAMINER